

# CHRISTIAN COUNTY WATER DISTRICT

P.O. Box 7  
Hopkinsville, KY 42241-0007  
Phone: 270-886-3696  
Fax: 270-886-0708

RECEIVED

OCT - 6 2003

PUBLIC SERVICE  
COMMISSION

## Water Commissioners

William Lile  
Chairman

Austin Young  
Secretary

J. David Johnson  
Treasurer

Steve Hunt

Ashbel Brunson

October 3, 2003

Thomas M. Dorman  
Executive Director  
Public Service Commission  
P O Box 615  
Frankfort, KY 40602

RE: Case No. 2003-00087  
Investigative Study

Dear Mr. Dorman:

On September 26, 2003, Section one, of a proposed settlement agreement was forwarded to your office. We must regretfully inform you that, as of this time, there exist unresolved issues between Christian County Water District and Hopkinsville Water Environment Authority. Therefore, no comprehensive formal contract agreement has been reached.

Christian County Water District sincerely felt we had made significant headway through third party negotiations. However, as indicated by HWEA most recent counterproposal, there still exist issues which must be resolved.

Hopefully, in the very near future, a truly comprehensive cost based contract agreement can be reached.

Sincerely



James Owen  
General Manager

**DAMON R. TALLEY, P.S.C.**

112 N. LINCOLN BLVD.  
P.O. BOX 150  
HODGENVILLE, KENTUCKY 42748

TEL. (270) 388-3187  
FAX (270) 388-8860

**DAMON R. TALLEY**

RECEIVED

OCT - 6 2003

PUBLIC SERVICE  
COMMISSION  
**ATTORNEY AT LAW**

September 5, 2003

Hon. Andrew C. Self  
Deatherage, Myers, Self & Lackey  
P. O. Box 1065  
Hopkinsville, KY 42241-1065

RE: Hopkinsville Water Environment Authority and  
Christian County Water District  
Case No. 2003-00087

Dear Andrew:

At the September 4, 2003 meeting of the Board of Commissioners of the Christian County Water District ("Water District"), the Water District accepted the settlement proposal contained in your July 16, 2003 letter to me, subject to certain additional conditions contained in my July 8, 2003 letter to you. The entire settlement proposal from the Water District to the Hopkinsville Water Environment Authority ("HWEA") follows:

1. The wholesale water rates that HWEA shall charge the Water District shall be in accordance with the June 19, 1996 Contract Modification Agreement ("1996 Amendment") between HWEA and the Water District. The 1996 Amendment provides for a 1.3 multiplier times the applicable city rates. In calculating the wholesale rates, HWEA shall include the fourth tier which was deleted by the Hopkinsville City Council on November 21, 2000. Based upon the current city rates, the wholesale rates that HWEA shall charge the Water District are set forth in Schedule 1 which is attached hereto. This is the same Schedule 1 which was attached to my June 9, 2003 settlement proposal letter to you.

*Accept  
Your  
Language  
Motion #1*

Motion # 2  
Motion # 10

2. The term of the existing Water Purchase Contract ("Contract") between the parties shall be extended so that there will be 42 years remaining on the Contract;
  3. The Contract shall be amended so that HWEA shall furnish the Water District such quantities of water as may be required by the Water District, but not to exceed 2,000,000 gallons per day nor 49,000,000 gallons per month plus the amount of water transported through the Water District's transmission mains to the Crofton Water System which is owned and operated by HWEA;
- 
4. The Water District shall provide written notice to HWEA before commencing the installation of any major water line extension. The notice shall be provided no later than the date that the Water District submits its plans to the Kentucky Division of Water for approval of the line extension;
  5. In an effort to coordinate planning and minimize duplication of facilities, both the Water District and HWEA shall pledge to cooperate, to exchange information and to communicate regarding future projects;
  6. The Water District shall not wholesale any water provided to it by HWEA without the prior, written approval of HWEA, which approval shall not be unreasonably withheld;
  7. The Settlement Agreement will be contingent upon approval by the Kentucky Public Service Commission ("PSC"); and
  8. The Water District pledges to use its best efforts to help expedite the approval of the Settlement Agreement by the PSC.

The Water District is interested in consolidating the Contract and its numerous amendments and extensions into one agreement. It also desires to return to a wholesale rate that is calculated by a formula similar to the formula contained in the 1973 Contract. After this case is settled, the Water District pledges to negotiate in good faith with HWEA to update the Contract and the 1973 formula.

Please discuss this settlement proposal with your client as soon as possible and let me know whether it is acceptable. If you have any questions, or need any additional information, please let me know.

Yours truly,  
DAMON R. TALLEY, P.S.C.

  
DAMON R. TALLEY

DRT:ln

Enclosure

cc: James Owen, General Manager, CCWD  
John P. Kirkham

**DAMON R. TALLEY, P.S.C.**

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DAMON R. TALLEY

ATTORNEY AT LAW

October 1, 2003

Mr. William Lile, Chairman  
Christian County Water District  
P. O. Box 7  
Hopkinsville, Kentucky 42241-0007

RE: Andrew Self Letter Dated September 29, 2003

Dear Chairman Lile:

The purpose of this letter is to correct some misstatements contained in the letter from attorney Andrew Self to attorney John Kirkham dated September 29, 2003.

Mr. Self's letter indicates that all six (6) of the conditions for extending the contract between HWEA and the Water District were originally proposed by me in my September 5, 2003 letter to Andrew Self. **This is not correct.** While most of the conditions contained in Mr. Self's letter were contained in my September 5, 2003 letter, at least two (2) conditions were **not** contained in my letter. The two (2) new conditions added by HWEA and contained in Mr. Self's letter are as follows:

1. Paragraph No. 2 of his letter contains a ten (10%) percent penalty clause if the Water District exceeds its new limit. I **never** suggested, either orally or in writing, that HWEA should try to impose a penalty clause. The first time this topic was mentioned was in a telephone conversation between Mr. Self and me on Wednesday, September 17, 2003 following the HWEA Board meeting. Mr. Self informed me that HWEA had added this additional condition. I did **not** offer any opinion about whether this penalty clause would be acceptable or unacceptable to the Water District; and

2. Paragraph No. 5 of his letter provides that HWEA shall be the sole wholesale water provider for the Water District. **This was a real shocker!** The first knowledge I had of this condition was when I read Mr. Self's letter on October 1, 2003. I was completely surprised when I saw this condition in Mr. Self's letter. I immediately called John Kirkham and James Owen to express my astonishment to them. In my opinion, a provision such as this is a "**deal breaker**" unless it is accompanied by concomitant concessions of equal magnitude by HWEA.

Finally, I have **never** represented to Mr. Self, or anyone else, that the new conditions added by HWEA will be acceptable to the Water District. It would be imprudent for me to speculate how five (5) independent-minded water commissioners would react to these new conditions. Nevertheless, all of the conditions, except for the two (2) discussed above, contained in Mr. Self's September 29, 2003 letter were previously approved by the Water District (see my September 5, 2003 and my July 8, 2003 letters to Andrew Self).

Please provide a copy of this letter to the other Water District Commissioners. If you have any questions, please contact me.

Yours truly,  
DAMON R. TALLEY, P.S.C.

  
DAMON R. TALLEY

DRT:ln

cc: Hon. John P. Kirkham  
James Owen, General Manager

**LAW OFFICES OF JOHN P. KIRKHAM**

1404 South Virginia Street  
P.O. Box 585  
Hopkinsville, KY 42241-0585  
Phone (270) 885-1121  
Fax (270) 885-1123

**FACSIMILE COVER SHEET****DATE : Oct. 3, 2003****TO:** James Owen  
Christian County Water District**FAX NO.** 886-0708**FROM:** jpk**RE:** Correspondence from Andrew Self**NUMBER OF PAGES, INCLUDING COVER SHEET:** 3**MESSAGE:**

Please find attached a message from Andrew attempting to explain himself with regard to his gross misrepresentation in his September 29 letter that he had spoken to Damon and myself about the 10% penalty, and the exclusive wholesale distribution commitment—and that we had indicated we thought both of those proposals would be acceptable with CCWD. Needless to say I certainly didn't represent anything like that to Andrew.

As I advised you and Mr. Lile, he did tell me they were going to come back with the penalty proposal but I never advised that I thought that would be acceptable, or not. The exclusive agreement wasn't even discussed.

Please share a copy of this with Mr. Lile and the commissioners. Will 8 o'clock tonight be timely to get into this as we did last meeting? Do you want Andrew and Len to be there?

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~~The information contained in this transmission is privileged, confidential, and intended only for the use of the individual or entity named above. If you have received this communication in error, please~~

**DEATHERAGE, MYERS, SELF & LACKEY**  
ATTORNEYS AT LAW  
701 SOUTH MAIN STREET  
POST OFFICE BOX 1086  
HOPKINSVILLE, KENTUCKY 42241-1086

ANDREW C. SELF

October 2, 2003

TELEPHONE 270-886-6800  
TELECOPIER 270-886-7127  
EMAIL [aself@dmselflaw.com](mailto:aself@dmselflaw.com)

Hon. John P. Kirkham  
1404 S. Virginia St.  
P. O. Box 585  
Hopkinsville, KY 42241-0585

**RE: HWEA/CCWD**

Dear John:

Damon Talley called me yesterday afternoon to express his concern regarding my letter to you dated September 29, 2003. For clarification purposes, there were in fact two (2) conditions in my September 29, 2003 letter which were not in Mr. Talley's September 5, 2003 letter to me. Those two (2) conditions include the 10% penalty clause if the CCWD exceeds its new limit (paragraph number 2 of my September 29 letter) and the condition that HWEA shall be the sole wholesale water provider for the CCWD (paragraph number 5 of my September 29 letter).

My September 29 letter was intended to be a "counterproposal" from HWEA following our Board's consideration of this matter in September. Of course, I had discussed the penalty provision in conversations with both you and Mr. Talley prior to sending the letter. I also indicated to both of you that the HWEA Board would include that provision in its counterproposal. What purpose does establishing a new limit serve if there is no penalty or consequence for exceeding it? I believe the 10% penalty clause is fair and reasonable under the circumstances.

Quite frankly, we did not think the sole source provider provision would be of any concern to CCWD. It is my understanding at the present time that HWEA is the sole wholesale water provider for the CCWD. If the CCWD wants a longer term and more water, which will necessarily result in future upgrades and modifications to HWEA's system (at HWEA's expense), then it is entirely reasonable and appropriate for HWEA to receive the assurance that the CCWD will be buying water from HWEA during the period of the contract, and not from some other provider.

Given the apparent acrimony between our respective clients, I wanted to clarify the contents of my September 29 letter, which apparently have been construed



Hon. John P. Kirkham  
RE: HWEA/CCWD  
October 2, 2003  
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in a manner other than what I intended. In no way did I intend to imply that you or Mr. Talley had agreed to any or all of these conditions. My September 29 letter to you was intended to be a counterproposal which included the conditions approved by the HWEA board in order to extend the term of the contract and increase the capacity of water available to the CCWD.

If it would be helpful for either Mr. Hale or me to attend your board meeting tonight to address any of these questions or concerns, we would be glad to do so.

Sincerely,



Andrew C. Self

ACS/rmb

c: Robert C. Carter, HWEA Board Chairman  
Len Hale, HWEA Gen. Mgr.  
Damon R. Talley, Esq.  
Hon. Steve Tribble, Chr. Co. Judge Exec.

**LAW OFFICES OF JOHN P. KIRKHAM**

1404 South Virginia Street  
P.O. Box 585  
Hopkinsville, KY 42241-0585  
Phone (270) 885-1121  
Fax (270) 885-1123

**FACSIMILE COVER SHEET**

**DATE : Sept. 29, 2003**

**TO: James Owen, CCWD**

**FAX NO.(270)886-0708**

**FROM: JPK**

**RE: Agreement to contract modifications from HWEA**

**NUMBER OF PAGES, INCLUDING COVER SHEET:3**

**MESSAGE:**

James: Please find a copy of the agreement to modify the contract I have just received from Andrew by fax. I'm sure a hardcopy is in the mail. It is as we anticipated and have discussed.

This should be on the agenda for review and a decision by the commissioners Thursday night. You can let me know if it is desired I attend the meeting.

Thanks.

Jpk

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The information contained in this transmission is privileged, confidential, and intended only for the use of the individual or entity named above. If you have received this communication in error, please notify us immediately by telephone (collect) 270 885-1121, and return the original document to the above address via U.S. Postal Service. We will reimburse you for the postage. Thank you.

**DEATHERAGE, MYERS, SELF & LACKEY**

ATTORNEYS AT LAW  
701 SOUTH MAIN STREET  
POST OFFICE BOX 1086  
HOPKINSVILLE, KENTUCKY 42241-1086

ANDREW C. SELF

September 29, 2003

TELEPHONE 270-886-6800  
TELESCOPIER 270-886-7127  
EMAIL: aself@dmallaw.com

Hon. John P. Kirkham  
1404 S. Virginia St.  
P. O. Box 586  
Hopkinsville, KY 42241-0586

RE: Hopkinsville Water Environment  
Authority and Christian County  
Water District

Dear John:

This is in response to your letter dated September 15, 2003 in which the CCWD requested that HWEA consider amending the existing June 28, 1973 Water Purchase Contract and its multiple amendments, extensions and addendums (the "Contract") between HWEA and the CCWD to extend the term of the Contract and to increase the quantity of water to be provided to CCWD by HWEA.

The HWEA Board, meeting in regular session on September 17, 2003, agreed to the proposed amendments by the CCWD, in addition to the other provisions set forth in Damon Talley's letter to me dated September 5, 2003. Accordingly, the Contract will be amended to include the following terms:

1. The term of the Contract between the parties will be extended so that there will be 42 years remaining on the Contract;
2. HWEA will furnish to the CCWD such quantities of water as may be required by the CCWD, but not to exceed 2,000,000 gallons per day nor 49,000,000 gallons per month, plus the amount of water transported through the CCWD's transmission mains to the Crofton Water System which is owned and operated by HWEA. The CCWD shall pay a 10% penalty for any water used in excess of 2,000,000.00 gallons per day or 49,000,000 gallons per month.
3. The CCWD shall provide written notice to HWEA before commencing the installation of any major water line extension. The notice shall be provided no later than the date that the CCWD submits its plans to the Kentucky Division of Water for approval of the line extension;

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RE: HWEA/CCWD  
September 29, 2003  
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4. The CCWD shall not wholesale any water provided to it by HWEA without the prior, written approval of HWEA, which approval shall not be unreasonably withheld;

5. HWEA shall be the sole provider of wholesale water to the CCWD;  
and

6. In an effort to coordinate planning and minimize duplication of facilities, both the CCWD and HWEA shall pledge to cooperate, to exchange information, and to communicate regarding future projects.

Based on previous correspondence between the parties, as well as my conversations with you and Damon, it is my understanding that you believe the provisions contained in this letter will be acceptable to the CCWD so that we can move forward with an appropriate amendment of the existing Contract.

Please let us hear from you at your convenience so that we can move forward with the resolution of these matters. As always, we greatly appreciate your cooperation.

Sincerely,



Andrew C. Self

ACS/rmb

cc: Robert C. Carter, HWEA Board Chairman  
Len Hale, HWEA Gen. Mgr.  
Damon R. Talley, Esq.

**MINUTES  
OF  
THE CHRISTIAN COUNTY WATER DISTRICT COMMISSION  
SPECIAL CALLED MEETING  
SEPTEMBER 9, 2003  
7:00 P.M.  
1960 DAWSON SPRINGS RD  
HOPKINSVILLE KY 42240**

**PRESENT: WILLIAM LILE, J DAVID JOHNSON, STEVE HUNT,  
ASHBEL BRUNSON, COMMISSIONERS.**

**JOHN KIRKHAM, ATTORNEY, STEVE TRIBBLE,  
COUNTY JUDGE EXECUTIVE, JAMES OWEN,  
MANAGER AND OLLIE FUTRELL.**

**I. DETERMINATION OF QUORUM:**

There existed a quorum. The meeting was called to order.

**II. CONTRACT – HWEA:**

Mr. William Lile, Chairman advised the Commission that he had spoken with Mr. Ashbel Brunson and Mr. Brunson had asked for a special meeting to settle with HWEA concerning the wholesale rates controversy.

At this time, the Commission gave Steve Tribble, County Judge Executive, the floor in order for Mr. Tribble to convey to the Commission what had transpired with his meeting with Len Hale of HWEA and additional meetings with Bob Carter, Len Hale and Andrew Self, Attorney for HWEA. Mr. Tribble advised the Commission on his and Mike Foster's meeting with Len Hale. Mr. Tribble related that Mr. Hale advised him that what was presented on the last proposal was not acceptable. The only controversy was on the wholesale rate and that the other items need to be addressed separately. Mr. Hale gave Mr. Tribble his verbal

## **MINUTES**

### **PAGE 2**

approval of the rate and advised him that the other items, amount of years and water usage in the contract could be amended, but they needed to be addressed in another document. Mr. Tribble related that after he had talked with Mr. Hale, he talked with Andrew Self, HWEA Attorney, about the proposal and what was said by Len Hale. Mr. Self called Mr. Tribble back and he had met with Bob Carter, Chairman of HWEA, and Mr. Hale. Mr. Self advised Mr. Tribble that they had all verbally agreed to what the district proposed but to have it done in two separate documents.

Mr. Owen advised the Commission and Mr. Tribble about a letter of notification concerning this proposal would need to be sent to PSC by Mr. Damon Tally. The letter will advise PSC that the entities agree on the language of price and that the attorneys agree on what language to use in the proposal (s).

After some discussion, Ashbel Brunson motioned to accept the proposal written in the letter dated September 5, 2003 known as Item #1 with the striking of the last sentence.

#### **Item#1**

**The wholesale water rates that HWEA shall charge the Water District Shall be in accordance with the June 19, 1996 Contract Modification Agreement ("1996 Amendment") between HWEA and the Water District. The 1996 Amendment provides for a 1.3 multiplier times the applicable city rates. In calculating the wholesale rates, HWEA shall include the fourth tier which was deleted by the Hopkinsville City Council on November 21, 2000. Based upon the current city rates, the wholesale rates that HWEA shall charge the Water District are set forth in Schedule I, which is attached hereto.**

Steve Hunt seconded the motion. The Commission accepted the motion made by Ashbel Brunson and seconded by Steve Hunt.

## **MINUTES**

### **PAGE 3**

Steve Hunt motioned to have John Kirkham, attorney for CCWD, submit to HWEA a request in letterform addressing items two and three of the proposal, as previously discussed and verbally agreed upon. J David Johnson seconded the motion. The Commission accepted the motion.

At this time, the Commission instructed Ollie Futrell to attach the HWEA's Schedule I rate structure to these minutes.


There ensued a teleconference between Damon Tally, Steve Tribble and the Commission concerning the motion (s), subsequent legal documents and the PSC conference. Mr. Kirkham contacted Mr. Self, attorney for HWEA, via the telephone and acquired his verbal agreement to what was motioned on by the Christian County Water District Commission.

After the Teleconference, Mr. Tribble addressed the Commission on different funds that are available for the district to use/borrow. Also, the district may need to assemble a plan on the use of these funds.

The Commission discussed some of the areas that could be incorporated into this plan.

All business was completed. Steve Hunt motioned to adjourn the meeting. J. David Johnson seconded the motion. The meeting was adjourned.

  
\_\_\_\_\_  
**WILLIAM LILE, CHAIRMAN**

  
\_\_\_\_\_  
**AUSTIN YOUNG, SECRETARY**

## **UPDATE TO THE BOARD OF COMMISSIONERS PRIOR TO OCTOBER 2, 2003 MEETING**

### **HWEA**

Mr. Lile went by Thursday and signed the settlement agreement as prepared by Damon and Andrew. Mr. Lile had asked about the Water Withdrawal portion of the agreement, he was told that it was approved by HWEA Board but, as of yet, has not been received. After Mr. Lile had signed the settlement agreement, he informed John he was not happy with the delay in part number two. John moved over by Mr. Lile and said that from what we had been told by Damon, it was just as our Board had agreed to. With the exception, that there would be a 10% penalty on any water used over the contract limit. Mr. Lile said, "John that wasn't what the Board was told and agreed to." John laughed and said, "Well, I guess you don't have to approve it."

John's body language implied the Board was boxed in.